Nos. 12,698-99

IN THE

United States Court of Appeals

For the Ninth Circuit

BANK OF CHINA, a Corporation, *Appellant*, vs. WELLS FARGO BANK & UNION TRUST CO., a Banking Corporation, *Appellee.*	No. 12698
BANK OF CHINA, a Corporation, *Appellant*, vs. WELLS FARGO BANK & UNION TRUST CO., a Banking Corporation, *Appellee.*	No. 12699

APPELLANT'S REPLY BRIEF

A. CRAWFORD GREENE
MORRIS M. DOYLE
OWEN JAMESON
1500 Balfour Building
San Francisco 4, California

JAMES B. BURKE
72 Wall Street
New York 5, New York

Attorneys for Appellant Bank of China.

McCUTCHEN, THOMAS, MATTHEW, GRIFFITHS & GREENE
1500 Balfour Building
San Francisco 4, California

BURKE & BURKE
72 Wall Street
New York 5, New York

Of Counsel.

PARKER PRINTING COMPANY, 180 FIRST STREET, SAN FRANCISCO

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

STATUTES AND REGULATIONS

TREATISES

IN THE

United States Court of Appeals

For the Ninth Circuit

BANK OF CHINA, a Corporation, *Appellant,* vs. WELLS FARGO BANK & UNION TRUST CO., a Banking Corporation, *Appellee.*	No. 12698
BANK OF CHINA, a Corporation, *Appellant,* vs. WELLS FARGO BANK & UNION TRUST CO., a Banking Corporation, *Appellee.*	No. 12699

APPELLANT'S REPLY BRIEF

THE ORDER APPEALED FROM IS APPEALABLE

The only defendant in this action is the Wells Fargo Bank & Union Trust Co. Paragraph 5 of the order appealed from (R. 108) provides that said defendant

> "* * * is hereby relieved of any and all claims for interest for use of the fund or because of its failure or refusal to pay said fund to plaintiff Bank of China * * *"

Paragraph 6 of the order appealed from provides that said defendant

> "* * * is hereby discharged of and from all liability in the premises either to plaintiff Bank of China or to anyone claiming through or on behalf of plaintiff, and plaintiff and all those now before this court who are assertedly acting in the name of plaintiff are restrained from enforcing or attempting to enforce any claim or claims against said defend-

ant relating to said sum of money or said deposit or from taking any proceedings against defendant in relation thereto;"

Thus, the only defendant in the case is discharged of all liability to plaintiff and relieved of all claims for interest, and plaintiff is enjoined from enforcing any claim or from taking any proceedings against defendant in relation thereto. It is difficult to imagine a more complete and final discharge of a defendant than that embraced in the foregoing provisions of the District Court's order. The order simply, cleanly and effectively takes the sole defendant right out of the case. This order is final, and therefore appealable, because

A. It finally discharges a contract debtor from an obligation to the plaintiff.

Bank of Taiwan v. Gorgas-Pierie Mfg. Co., 273 Fed. 660, 661 (C.C.A. 3, 1921)

"This appeal is from an order of interpleader. The plaintiff-appellee moves to dismiss the appeal on the ground that the order is not final. The order aligns the parties, prescribes the method of procedure, and—as it will presently be seen—*finally denies to one of the parties the right to assert a contract obligation against another.* We regard the order as final within the meaning of the statute, and, accordingly, deny the motion to dismiss the appeal." (Citations omitted; italics added.)

B. It leaves the plaintiff in precisely the same position it would occupy upon the granting of a compulsory nonsuit—an order from which an appeal may be taken. *Restatement, Judgments* § 53, page 207; *Central Transportation Co. v. Pullman's Car Co.,* 139 U.S. 24, 39, 11 S.Ct. 478, 480, 35 L.Ed. 55, 61; *U. S. v. City Savings Bank & Trust Co.,* 73 F.2d 486 (C.C.A. 6, 1934); *Cyc. Fed. Proc.,* 2nd Ed., § 4875. The only difference is that here, because of the injunction, the plaintiff is precluded from bringing suit elsewhere.

C. It enjoins appellant from asserting or enforcing any claim against appellee. Even an interlocutory injunction is appealable.

28 U.S.C.A. § 1292; *Young v. Southern Pacific Co.*, 15 F.2d 280 (C.C.A. 2, 1926).

A motion denying remand is not appealable, but where it is coupled with an injunction against further proceedings in the state court, this Court will review both orders and where appropriate order a remand. *Albi v. Street & Smith Publication, Inc.*, 140 F.2d 310, 311 (C.C.A. 9, 1944).

Movant-appellee asserts (Brief, p. 34) that appeals from injunctions are limited to injunctions in equity suits. The statute (28 U.S.C.A. § 1292) contains no such limitation, and the case cited by movant-appellee does not so hold.[1] Precisely the same contention now made by movant was disposed of by the Court of Appeals for the Eighth Circuit in *Morgan v. Kroger Grocery & Baking Co.*, 96 F.2d 470 (1938). It was there held that an order entered after removal of a personal injury case enjoining further proceedings in the state court was appealable. The court said at page 472:

> "* * * It is said that the appeal will not lie because the order was not issued in an equity suit. Formerly, this section 129, 28 U.S.C.A. § 227 note employed the following language: 'That where, upon a hearing in equity in a district court * * *.'
>
> "The section, however, was amended, and there was eliminated from the above-quoted language the words 'in equity,' so that it now reads as follows: 'Where, upon a hearing in a district court, or by a judge thereof in vacation, an injunction is granted, continued, modified, refused, or dissolved by an interlocutory order or decree, * * * an appeal may be taken from such interlocutory order or decree to the circuit court of appeals.'
>
> "There would seem to be no doubt that under section 129 the order was appealable. Shanferoke, etc., Corporation v. Westchester Corporation, 293 U.S. 449, 55 S.Ct. 313, 79

---

[1] *Schoenamsgruber v. Hamburg American Line*, 294 U.S. 454, 55 S.Ct. 475 (1935), simply held that an order staying the trial of a suit in admiralty pending arbitration between the parties was not an injunction and not appealable. The significance of this case is that an admiralty court *cannot* issue an injunction, except in certain enumerated cases. There was no such limitation on the District Court in this action. F.R.C.P. Rule 1, Compare Rule 81.

L.Ed. 583; Gray, McFawn & Co. v. Hegarty, Conroy & Co., 2 Cir., 85 F.2d 516, 517 * * *."

Movant-appellee asserts also that the injunction herein was "merely an interlocutory order of a court of law controlling the progress of the litigation before it" (Mov. Br., p. 35). But this Court will observe that the order enjoins plaintiff-appellant "from taking any proceedings against defendant" in relation to the deposit. In other words, plaintiff-appellant could not dismiss its suit and commence another in the state court or elsewhere without contempt of court. This restraint plainly goes beyond mere control over the progress of the case before the court.

D. It amounts to sequestration of appellant's funds. The District Court had no judicial power to discharge the only debtor while denying recovery to the only claimant indefinitely. Such an order is appealable even though interlocutory. *DeBeers Mines v. United States,* 325 U.S. 212, 65 S.Ct. 1130 (1945). See also *Rubert Hermanos, Inc. v. Peo. of Puerto Rico,* 118 F.2d 752 (C.C.A. 1, 1941), *rev'd on other grounds,* 315 U.S. 637, 62 S.Ct. 771 (1942).

E. It denies the motions interposed by movant-appellee without prejudice, and a dismissal *without prejudice* is appealable by a defendant. *Cybur Lumber Co. v. Erkhart,* 247 Fed. 284 (C.C.A. 5, 1918); *Iowa-Nebraska Light & Power Co. v. Daniels,* 63 F.2d 322 (C.C.A. 8, 1933); *Cyc. Fed. Proc.,* 2nd Ed., § 4874.

F. It deprives plaintiff of all interest. It establishes the rights of the parties on this question and is, therefore, final and appealable. *Farmers' Loan & Trust Co.,* 129 U.S. 206, 215, 9 S.Ct. 265, 266-7 (1889); *Stokes v. Williams,* 226 Fed. 148, 152 (C.C.A. 3, 1915), *cert. den.,* 241 U.S. 681.

By virtue of the order appealed from, the only party defendant has been discharged from all liability for principal and interest to the only party plaintiff (movant-appellee is not, never has been and has never attempted to be a party).[2] In substance the order completely disposes of the case on *existing* facts and it was in-

[2]Movant came into the case with a procedurally anomalous motion. No effort was made to intervene because under Title 28 U.S.C.A. Sec-

tended to do so. Since substance not form is decisive, the order is appealable. *Dexter-Horton Nat. Bank v. Hawkins,* 190 Fed. 924, 926 (C.C.A. 9, 1911); *Potter v. Beal,* 50 Fed. 860, 863 (C.C.A. 1, 1892).

Appellant's claim was denied because the District Court erroneously believed that the *de facto* control of the Communists in continental China could have some effect on this San Francisco bank account. Movant's claim was nominally rejected by denial of its motion, but in reality that claim was given full recognition—appellant's bank account was blocked and it was deprived of its funds indefinitely without interest. Its account was frozen, not until existing facts could be discovered or collected but until the facts should change.

The rule that an appeal will lie only from "final" judgments and such interlocutory orders as are made appealable by statute is designed to prevent piecemeal review of litigation—taking cases to the appellate court "in fragments by successive appeals" (*Audi Vision, Inc. v. RCA Mfg. Co.,* 136 F.2d 621 at 624)—because this contributes to delay in the administration of justice. Denying appeal from the order before this court would serve no such purpose; the fundamental question in the case—whether the claims of an unrecognized government can have any effect upon this bank account in San Francisco—is ripe for review.

At the hearing on its motion, movant's counsel acknowledged that "Where this would appear to be an interlocutory motion, it

---

tion 1332, jurisdiction of the District Court extends only to controversies between "(2) citizens of a state, and foreign states or citizens or subjects thereof;" and a foreign state must achieve recognition by the United States Government before it or its citizens or subjects, *including its corporations,* may be suitors in the Federal Courts. See *Land Oberoesterreich v. Gude,* 109 F.2d 635, 637 (C.C.A. 2, 1940). This is most clearly illustrated by the fact that the attorneys here representing movant filed a complaint on April 27, 1950, on behalf of "Bank of China" to recover a deposit in the Citizens National Trust and Savings Bank of Los Angeles. But when the defendant there moved for a more definite statement, seeking a disclosure as to whether the plaintiff was a corporation existing under the National Government of China or the People's Government, the complaint was dismissed by Messrs. Popper et al., forthwith. *Bank of China v. Citizens National Trust & Savings Bank,* S.D. Cal. No. 11521-M. This Court may take judicial notice of what happened there. *Wells v. United States,* 318 U.S. 257, 260, 63 S.Ct. 582, 584 (1943).

is in fact a deciding factor in the case" (R. 340). He later added "But actually, it is a motion which tests the authority to act, and apparently, from the *Friedman v. Harris* case, it is itself an appealable motion" (R. 342).

The District Court recognized that the issue before it was one of law. That issue was briefed and the court decided it. Its order gave effect to the Communist claims by denying appellant its funds and discharging defendant free from all interest. The order assumed that no facts which any of the parties might present would change the result. It was a final order.

THE WELLS FARGO BRIEF

Wells Fargo, with an obvious obligation to pay its depositor, argues chiefly that it should be relieved of interest, and supports that argument with allegations of uncertainty as to the authority of appellant's officers and recitals of risks of double liability. Wells Fargo ought to be saying what is obviously true: That it has no claim to the monies left with it by appellant and that unless the Communists are entitled to those monies Wells Fargo is willing and, indeed, anxious to make prompt payment to appellant.

A. Wells Fargo Is Liable to Appellant for Interest.

1. The District Court relieved Wells Fargo from liability for any interest whatsoever. This was an unexpected windfall. Such relief was not argued for by anybody. On the contrary, Wells Fargo counsel said to the District Court "* * * we are paying a penalty in interest if the trial is delayed, but we think that penalty is worth getting a full, clear determination of all the issues" (R. 372). To retain this unforeseen relief, counsel now advances the startling proposition (Wells Br. 14) that "A continuance requested by a party suspends his right to receive interest during the delay accasioned thereby," and *Rasmusson v. Nat. Popsicle Corp.,* 105 F.2d 759 (C.C.A. 9, 1939) is cited in support thereof. But the *Rasmusson* case was one where the party seeking the continuance *stipulated* to forego interest in considera-

tion of the postponement. It has no application here and, of course, there is no such rule as that embraced within the proposition asserted.

There is a statutory right to interest, Calif. Civil Code §§ 3287, 3302, supported by the cases previously briefed (Op. Br., p. 11). The question of the right to interest on this deposit is governed by California law. *Klaxon Co. v. Stentor Co.,* 313 U.S. 487, 61 S.Ct. 1020 (1941); *Perkins v. Benguet Cons. Min. Co.,* 55 C.A. 2d 720, 768, 132 P.2d 70, 98 (1942), *cert. den.,* 319 U.S. 774, 320 U.S. 803; *Nesbit v. MacDonald,* 203 Cal. 219, 263 Pac. 1007 (1928). The mere existence of a dispute between two claimants cannot relieve the defendant of liability for interest. *Perkins v. Benguet Cons. Min. Co., supra* at 766, 132 P.2d at 97 (1942); *Conner v. Bank of Bakersfield,* 183 Cal. 199, 190 Pac. 801 (1920). A deposit in court erroneously permitted by a lower court does not stop the running of interest, and such deposit is improper where the debtor's only reason for refusal to pay is an erroneous view of the law. *Pfister v. Wade,* 56 Cal. 43, 51 (1880), 69 Cal. 133, 141, 10 Pac. 369, 373 (1886).

The purpose of interest is not to inflict punishment on Wells Fargo, but to provide compensation to appellant because it has been deprived of the use of its funds. See *United States v. Los Angeles Soap Co.,* 153 F.2d 320, 322 (C.C.A. 9, 1946).

2. Under *Guaranty Trust Co. v. United States,* 304 U.S. 126, 58 S.Ct. 785 (1938) and other cases cited in appellant's opening brief, Wells Fargo could and should have paid appellant, its depositor, with impunity and without reasonable fear of double liability.

3. Under California Banking Code Section 952,[3] Wells Fargo could and should have ignored the Communist claim. Like similar statutes in other states recommended by the American Bankers Association (see *Gendler v. Sibley State Bank,* 62 F. Supp. 805, N.D. Ia., 1945), it was drafted for the protection of bankers against adverse claims. It provides that notice to any bank of an adverse claim (e.g., the cables from Shanghai to Wells Fargo

[3]The text of the section is set forth in the appendix hereto.

dated June 25, 1949 (R. 134), June 29, 1949 (R. 138), and July 21, 1949 (R. 140)) to a deposit standing on its books may be disregarded until and unless the adverse claimant shall either procure and serve upon the bank a restraining order or execute and deliver to the bank a bond of indemnity. No bond or restraining order was presented to Wells Fargo in this instance. Three of its vice-presidents (R. 116, 144, 150) and its attorney (R. 330) all acknowledged that but for the adverse claims asserted in the Communist cablegrams from Shanghai there was no question as to appellant's right to the deposit. Now its counsel says "Appellee could not interplead at an earlier date because one of the *two conflicting claimants* was not within the jurisdiction of the court" (Wells Br., p. 6; emphasis supplied). If there were two conflicting claimants, why interplead? What is Section 952 for?

Wells Fargo knew that Bank of America had paid, but regretted that it could not take "similar action" (R. 126). Under these circumstances, why should Wells Fargo be gratuitously relieved from interest? One bank pays and avoids interest; the other refuses to pay yet incurs no liability for interest. Such cannot be the result for that would make it a matter of indifference to the law whether the depositary's obligation is honored or not.

B. The Simulated Issue of Authority Is Spurious.

For many years before receipt of the Communist cablegrams from Shanghai in June, 1949, Wells Fargo had permitted withdrawals from the Bank of China account upon request of those who made the request in this instance (R. 144, 145). Until those cablegrams were received there was no question about their authority (R. 116, 144, 150). Indeed, *after* receipt of the cables Wells Fargo's Vice-President Hellman cabled to R. C. Chen suggesting transfer of the Shanghai account to "Bank of China, Foreign Department, Hongkong," (R. 120) and later wrote as follows (R. 122):

Air Mail June 29, 1949
Mr. R. C. Chen,
Bank of China,
Hongkong, Hongkong.

Dear R.C.:

This will acknowledge receipt of your wire of June 28, and in accordance with your instructions, under separate advice, we have transferred your Shanghai account to a new account reading — 'Bank of China, Foreign Department, Hongkong.' We thought it best to advise this move in case the Communists took some legal means to tie up these funds although I admit it is rather far-fetched as I do not believe they would have any standing in court in this country.

Hoping that you and Mrs. Chen are well, and with kindest personal regards,

Sincerely yours,

Certainly Hellman had no question about the authority of those with whom he dealt and he could see no merit to the Communist claim. After these suits were filed he said that he was acting without advice of counsel (R. 74).

With this record Wells Fargo cannot be heard to say that those who acted for appellant were not authorized to do so. Obviously, Wells Fargo's officers did not really believe as a matter of fact that the Communists in Shanghai had become bona fide officers of its depositor the Bank of China.

Moreover, as a matter of law, the authority of the incumbent officers and directors could not be questioned collaterally. See *Spellman, Corporate Directors* 252 (1931); *Consumers Salt Co. v. Riggins,* 208 Cal. 537, 542-543, 282 Pac. 954 (1929); *Cons. Interstate C. M. Co. v. Callahan M. Co.,* 228 Fed. 528, 530 (D. Ida., 1915); *Weitz v. Preston,* 113 N.J.L. 271, 174 Atl. 429 (1934); *Mining Co. v. Anglo-Calif. Bank,* 104 U.S. 192, 26 L.Ed. 707 (1881).

Even the Communists acknowledge that the New York Agency is a part of the corporate entity of Bank of China (R. 90). Hence, independently of California Banking Code Section 952, the *Guaranty Trust* case, and the other authorities upon which appellant

relies, payment to the New York Agency in accordance with the demand made (R. 261) would have discharged Wells Fargo.

In order to bring to the Court's attention matters of which it may take judicial notice, we file with this reply brief a duly attested certificate of the Minister of Finance of the National Government of the Republic of China, executed at Taipeh, Taiwan, on March 23, 1951, (Appendix p. 6) certifying, amongst other things, that the National Government of the Republic of China is the owner of two-thirds of the capital stock of Bank of China and that, according to the records of the Ministry of Finance, Hsi Te-Mou is the general manager of said bank under Article XXV of its By-Laws; that the National Government is advised of the pendency of these actions, that they were instituted by the Bank of China through its duly authorized officers, and that the National Government as majority stockholder ratifies and approves the institution of said actions by appellant.[4] Bound together with said certificate, by the seal of the Embassy of the United States of America at Taipeh, is an affidavit of the Chief Secretary of Bank of China (Appendix p. 2) certifying to resolutions of the Board of Directors of Bank of China, both in English and Chinese, for the removal of the Head Office from Shanghai, and a certificate of the Finance Minister of the National Government (Appendix p. 7) certifying to certain Government directives, both in English and Chinese, issued to the Bank of China for the removal of the Head Office. Copies of these certificates and affidavit, together with the English but without the Chinese version of the exhibits attached thereto, are set forth in the appendix to this brief.

The certificate of the Finance Minister respecting the authority of Hsi Te-Mou under Article XXV of the By-Laws of the Bank of China (R. 206) should put an end to the spurious issue of lack of authority.

---

[4]Under California Corporations Code Section 6602 the Court shall take judicial notice of the Constitution and statutes applying to foreign corporations, and any interpretation thereof, the seals of State and state officials and notaries public, and of the official acts affecting corporations of the legislative, executive and judicial departments of the State or place under the laws of which the corporation purports to be incorporated.

C. The Bugaboo of Double Liability.

There are throughout Wells Fargo's brief repeated references to its dread of double liability. Judge Cardozo thought that "the chance of double payment is a common risk of life," *Petrogradsky M. K. Bank v. National City Bank,* 253 N.Y. 23, 170 N.E. 479, 485 (1930), *cert. den.,* 282 U.S. 878. We do not advocate that Wells Fargo be exposed to double liability, but appellee cites no case wherein double liability was imposed. Nor is any case cited in which a transaction with a recognized government or a corporation owned by such a government was upset even after subsequent recognition of another government. Wells Fargo would espouse a rule whereby, whenever and wherever there is a revolutionary movement of uncertain but promising durability, all transactions with nationals of that place are to be frozen to abide the *eventual* outcome five, fifteen or many years later (Wells Br. 27-28). A better rule has been established by the *Guaranty Trust, The Maret,* the *Petrogradsky Bank* and other cases cited in our opening brief. Under them, Wells Fargo could safely pay the corporation controlled by that government of China which our State Department has determined to be the only lawful government of China, and could safely ignore claims emanating from the unrecognized government. It could safely pay under California Banking Code § 952. It could also safely pay the New York Agency of its depositor no matter what the situation in the Orient might be. And we insist that in any case it may safely pay under a judgment of this Court.

MOVANT'S BRIEF

A. The "Record" as Handled by Movant.

Movant would have the Court believe that the Bank of China continues to operate in continental China under the same board of directors that controlled its affairs before the Communist occupation of Shanghai (Mov. Br. 37), that a majority of the stock is owned and "in the possession of" the Communist government (Mov. Br. 37, 78), and that the balance of the stock is owned by private persons "in China" (Mov. Br. 37, 54). The record

supports none of this. By movant's own account banking operations, if any, on the continent are now being directed by Communist government appointees (R. 93-4), and only two directors elected by private stockholders have gone over to the Communists (R. 92). The Communist Government does not claim to have the stock certificates (R. 93), if indeed this made any difference. The record does not show where the private stockholders are. It shows only that they are scattered (R. 170) and that the Communists have purported to expropriate the stock of "war criminals" (R. 90, 92), and that twenty-one of the twenty-five duly elected directors, representing sufficient stock to be elected to the board, are outside Communist territory and the whereabout of two more is unknown (R. 183).

Elsewhere in its brief, movant finds it more convenient to speak of a "new board of directors" (Mov. Br. 59-60, 78), but the cables upon which movant relies state only that board authority has been exercised by the Financial and Economic Affairs Commission of the People's Government (R. 94).

It is said that "There is no evidence in the record of a head office in Formosa nor the conduct of banking operations there" (Mov. Br. 64). The Court will find such evidence in the record at pp. 298, 282-3. It is said that Dr. Kung "had not even been connected with the Bank since April 30, 1948" (Mov. Br. 56), but the record shows that, while he is no longer Chairman of the Board, he is still a Managing Director (R. 155, 167, 183).

Movant's recurring insistence that the demands for these funds and the present law suit did not originate with the duly authorized officers of the Bank of China is based on nothing more of substance than its position that the Communists had power to discharge officers of the bank who were loyal to the National Government. But movant generally refuses to acknowledge this, asserting or implying that these officers had been discharged or their authority revoked by appellant itself (Mov. Br. 56-7, 59-60, 19, 22, 38-9). The record shows that the initial demand on Wells Fargo came from the Foreign Department in Hongkong (R.

261),[5] directing Wells Fargo to remit funds to the New York Agency (R. 261). There is no dispute that this demand came in usual form from officials with whom Wells Fargo had long dealt on cordial and personal terms (R. 114-16, 122, 131, 149-50). When Wells Fargo refused to respond, the General Manager of the Bank and the Manager of the New York Agency, after reporting to the Head Office in Formosa directed suit to be brought (R. 264, 283). Thus the action was not instituted "solely on the basis of a power of attorney * * * to one Tuh-Yueh Lee" (Mov. Br. 55, 6-7), nor "solely on the instigation of Kung and Hsi Te-Mou in New York" (Mov. Br. 56-7), although either Hsi or Lee certainly had ample authority. Indeed, the attack on appellant's internal authority by both movant and Wells Fargo is only a sham. Every attempt in that direction can be met simply by reference to the certificate of the Minister of Finance of the National Government certifying that Hsi Te-Mou is the General Manager of the Bank (R. 300). He is authorized to "manage the affairs of the whole Bank" (By-Law XXVIII, R. 207), and he directed the commencement of this suit.

It now appears from the certificate filed herewith that the recognized Government of China, owner of two-thirds of the stock, knows of these actions and expressly ratifies them (Appendix p. 6). Thus nothing is left of the argument, which was always patently sham anyway, that there was something the matter with the authority of those who acted for appellant, *independently* of the Communist claim.

B. Movant's Legal Position.

The legal effect of the Communist claim is the only bona fide issue here. The only real question before this Court is: *Does the fact of control of large portions of Chinese territory, including the former Head Office building of the Bank of China in Shanghai, in and of itself entitle the People's Government to control over the Bank of China so that officers appointed by that govern-*

[5]After the Head Office moved from Shanghai, the Foreign Department operated for a time from Hongkong (R. 58, 270, 255).

ment have the right to control these bank deposits in San Francisco? We submit that the existence of the People's Government and the fact of its control in continental China are wholly irrelevant.

To support its position Movant relies upon three facts all of which may be conceded for the purposes of argument:

(1) That it is operating a bank in China, called Bank of China, in buildings once occupied by appellant.

(2) That the People's Government exists in and controls most of continental China.

(3) That the Bank of China is a private corporation.

These facts, when taken separately or added together, do not support movant's conclusions.

1. MOVANT IS NOT THE BANK OF CHINA.

Movant suggests it is operating as a Bank of China in buildings once owned by appellant, under the name Bank of China. But by occupying the Bank's abandoned buildings, it did not thereby become the corporate entity Bank of China. That was moved, in fact (R. 194-5) and legally (R. 298). The Bank of China now has its Head Office in Formosa and operates an agency in New York City. Movant cannot crawl into the corporate skin of the Bank of China while appellant is still there.

2. THE COMMUNIST GOVERNMENT DOES NOT OWN THE BANK OF CHINA.

Movant reiterates that this Court cannot ignore the existence of the People's Government. We submit, however, that the existence of that government is irrelevant in this case. The question is not whether that government exists but whether persons appointed by it are authorized officers of the Bank of China.

Movant claims that it and not appellant is the Bank of China, a private corporation. Its authority to appear here comes from persons who claim to be officers of that corporation (R. 78-9, 92-4). But they were appointed by the Communist armies, not by the directors of the corporation, or by any persons claiming to be directors (R. 140). Nothing in the record indicates that

they represent the private shareholders, and certain it is that they do not represent the recognized Government of China, which owns two-thirds of the shares. Hence movant claims through those who are unauthorized except by appointment of the unrecognized government. An unrecognized government cannot by seizure obtain the right to control a corporation and its affairs: the courts have unanimously held that expropriation of a foreign private corporation by the unrecognized government of its homeland has no effect upon corporate assets here. *Petrogradsky M. K. Bank v. National City Bank of N. Y.*, 253 N.Y. 23, 170 N.E. 479 (1930), *cert. den.*, 282 U.S. 878; *The Maret,* 145 F.2d 431 (C.C.A. 3, 1944); see also cases cited in opening brief pages 16-19. That was true when the recognized government was reduced to a fiction only and the corporation was factually extinct in its homeland. It is even more true when, as here, the corporation is alive and has the active support of a functioning government recognized by the United States.

Movant would avoid these decisions by asserting that there has been no expropriation, in spite of its own claim that it has "taken over" (R. 90) the stock of the National Government and certain "war criminals" (R. 92). But if there has been no seizure, upon what does movant's claim rest? Two-thirds of the stock of the Bank of China is owned by the Government of China. For years this stock has belonged to and been voted by the National Government, the government now recognized by the United States as the Government of China. Movant pleads that this Court cannot ignore the *de facto* existence of the Communist Government. Neither can the Court ignore the continued existence, both *de facto* and *de jure,* of the National Government. Our Government treats the National Government as *the* Government of China and recognizes it as the owner of Chinese Government property in American territory. At the same time, American armies are at war with the armies of Communist China. Our foreign policy would be subverted were this Court to treat this adversary government as owner of the Bank of China stock, thereby allowing it, through its appointees, to control this bank deposit.

In the cases cited by movant the *de facto* existence of the unrecognized government was material. Those courts were dealing with acts of that government done in its own territory to persons and property over which it had physical control. These cases, which we shall discuss presently, do not apply to this situation. Here, not only had the Bank of China itself moved beyond the control of the unrecognized government, but the property in question was a bank deposit in the United States. No case cited by movant (with the possible exception of *The Denny,* which we discuss *infra)* holds that a court in the United States, by its own decree, will extend the power of an unrecognized government to property situated in the United States which that government cannot reach without the court's aid.

When property in the United States is in issue, the decisions cited in appellant's opening brief (pp. 14-19, 22-23) are applicable, for they establish that the power of an unrecognized government is limited to its own territory. *Guaranty Trust* (304 U.S. 126) holds that a foreign government deposit in an American bank belongs to the recognized government and not to the *de facto* regime. *Petrogradsky Bank* (170 N.E. 479) holds that seizure of a corporation by the unrecognized government gives that government no power over assets of the corporation in this country. *The Maret* (145 F.2d 431, Mov. Br. 76) and *The Florida* (133 F.2d 719) establish that when an unrecognized government sets up a private corporation which asserts rights to property here, the unrecognized government is the real party in interest and the claim is denied. *Republic of China v. Merchants' Fire Assur. Corp.,* 30 F.2d 278 (C.C.A. 9, 1929), demonstrates that an unrecognized government in actual control of Chinese territory is not entitled to Chinese government funds in the United States.

In re Grauds Estate (41 N.Y.S.2d at 267-8, 59 N.Y.S.2d 710) permits only the recognized government, even though deposed, to appear before the court here to represent foreign nationals who have property here but whose persons are under the control of the unrecognized government. *Latvian State Cargo* (80 F. Supp.

683) gave summary judgment against the claim of a corporation created by the unrecognized Latvian Government which sought the insurance proceeds of ships belonging to Latvian citizens. *Amstelbank* (31 N.Y.S.2d 194) and *Koninklijke* (30 N.Y.S.2d 518) ordered depository banks to ignore claims to corporate funds asserted from occupied territory.[6] *A/S Merilaid* (71 N.Y.S.2d 377) ordered a depository bank to repay deposits to a foreign corporation which had moved to another foreign nation prior to conquest by the unrecognized government.

In each of these cases recognition was decisive. The issue was not whether a *de facto* government could enter into treaties or send diplomatic representatives to this country, as movant intimates. In each case disposition of property in the United States was before the court. In each, recognition was the factor which determined to whom the property should go. The dictum in *Guaranty Trust* (304 U.S. at 138), cited by movant at page 71 and by Wells Fargo at page 27, means only that a court must always determine whether or not recognition is decisive in the case before it. *Guaranty Trust* holds that recognition is decisive when title to property depends upon which government is the government of a nation. Since the National Government is the Govern- of China, it is the owner of two-thirds of the Bank of China's stock. The officers and directors who were elected at the regular 1948 shareholders' meeting (R. 237-8) for a term of four years (By-Laws, Art. XXIX, R. 207) and are now endorsed by the National Government, are entitled to control the affairs of the Bank, including this deposit.

3. MOVANT'S AUTHORITIES ARE INAPPLICABLE.

Of the many cases cited by movant, some of which are also cited by Wells Fargo, most hold only that control by an unrecognized government in its own territory is accepted and its acts there have the effect of law. *M. Salimoff* (186 N.E. 679,

---

[6]The New York statutory changes to which movant refers (Mov. Br. 75) were procedural only, and did not touch that part of these two cases which decided that claims based upon acts of an unrecognized government and asserted by its appointees have no effect on corporate deposits here.

Mov. Br. 48) held that an American company which purchased oil from lands confiscated by the unrecognized government had committed no tort. *Banque de France* (33 F.2d 202, Mov. Br. 49) refused to impose liability on an American bank which purchased gold seized in Russia by the unrecognized regime. The Civil War cases (Mov. Br. 41) upheld the validity of some of the internal acts of some of the states of the Confederacy, such as property transfers and divorces (although acts furthering the rebellion were never sanctioned). *Underhill v. Hernandez* (168 U.S. 250, Mov. Br. 44, 78) denied damages to an American who was temporarily refused permission to leave territory controlled by the then unrecognized government. These cases have no application to this case involving bank deposits in San Francisco owned by a corporation which still exists as a going concern under the recognized Government of China.

Russian Volunteer Fleet (282 U.S. 481, Mov. Br. 39, 44) held that a Russian private corporation did not lose its claim against the United States because the recognized government at its domicile was supplanted by an unrecognized one. Unlike movant's claim, the claim there was not founded upon the change of government, nor was it asserted adversely to the rights of the established *de jure* officers and directors of the corporation.

The Denny (127 F.2d 404, Mov. Br. 50, 75-6) held that a United States court could not disregard a power of attorney signed by the owners of the ship in question without sufficient evidence of duress or inadequate authentication. *The Maret* (145 F.2d at 440, n. 38), a later decision by the same court, explains *The Denny* in that way. To the extent that *The Denny* supports movant, it has been effectively overruled by *The Maret*.

The *Wulfsohn* case (138 N.E. 24, Mov. Br. 70) shows that existence of a government may be proved in ways other than recognition, but it does not hold that such existence is material in a case such as this. It holds only that an unrecognized government has sovereign immunity.

Eastern States Petroleum (28 F. Supp. 279, Mov. Br. 50) accepted as valid the expropriation by the Mexican Government

of oil lands within its territory. If in point at all, this case demonstrates that neither movant nor appellee can question the validity of the Bank of China's move from Shanghai to Formosa since the move was ordered by the National Government (R. 194-5; Appendix p. 9 et seq.), a recognized government in actual control of Shanghai at the time.

Russian Reinsurance Co. v. Stoddard (147 N.E. 703, Mov. Br. 73) held only that when there was no existing recognized government of Russia, the New York courts would not take jurisdiction of a suit in the name of a Russian corporation brought by directors whose terms had expired and who sat in a nation which recognized the Russian decrees expropriating the corporation. The *Sokoloff* (145 N.E. 917), *Severnoe* (174 N.E. 299) and *Fred S. James* (146 N.E. 369) cases (Mov. Br. 74) are so clearly inapplicable that they merit no discussion.

In its attempt to show that Wells Fargo may be doubly liable, movant quotes from *Steingut v. Guaranty Trust Co.* (Mov. Br. 79, cited as *United States v. Guaranty Trust Co.*), 161 F.2d 571 (C.C.A. 2, 1947). But movant fails to point out that the Court of Appeals was merely agreeing with the District Court that the demand by the corporation's directors was ineffective to start interest running in favor of the United States whose claim was predicated upon Soviet expropriation and was adverse to the directors' claim. The case in effect acknowledges the *Guaranty Trust v. U. S.* (304 U.S. at 140) rule that completed transactions, unlike mere demands, are not upset by subsequent recognition.

Movant's authorities are easily summarized. In many circumstances courts must acknowledge the *de facto* existence of an unrecognized government. But courts in the United States will not extend the power of such a government to persons, property or corporations over which that government has no physical power.

The China Aid Act of 1948 (62 Stat. 158, 22 U.S.C. § 1541-46) and the China Area Aid Act of 1950 (64 Stat. 202, 22 U.S.C. § 1547) made United States funds available for the economic aid of China in areas not under Communist control. While United States funds are thus made available to Nationalist China, other funds deposited here by a corporation controlled by the

National Government should not be turned over to the unrecognized Communist Government nor frozen indefinitely, as was done by the District Court (R. 384). The freezing of foreign assets is an executive, not a judicial, function. (Compare Treasury Department Order Freezing Chinese Communist Assets in the United States, 15 Fed. Reg. 9040 (1950), 31 Code Fed. Reg., Sec. 500.101 et seq.) It follows that Wells Fargo is liable to appellant for the full amount of the deposits plus interest and costs.

Respectfully submitted,

A. Crawford Greene
Morris M. Doyle
Owen Jameson
James B. Burke

Attorneys for Appellant Bank of China.

McCutchen, Thomas, Matthew, Griffiths & Greene
Burke & Burke
Of Counsel.

(Appendix follows)

Appendix

CALIFORNIA BANKING CODE SECTION 952

§ 952. Notice of adverse claim to deposit: When may be disregarded: Notice that fiduciary about to misappropriate deposit: Application of § 953: Authority by depositor to another to make withdrawals. Notice to any bank of an adverse claim (the person making such adverse claim being hereinafter in this section called "adverse claimant") to a deposit standing on its books to the credit of or to personal property held for the account of any person may be disregarded until and unless the adverse claimant shall (a) procure and serve upon the bank at the office at which the deposit is carried or the property held a restraining order, injunction, or other appropriate order against the bank from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose name such credit stands or for whose account such property is held are parties; or (b) execute and deliver to the bank at the office at which the deposit is carried or the property held a bond in form and with surety acceptable to it and in an amount fixed by the bank, but which amount in no event need be more than twice the amount claimed if the adverse claim is made against a deposit, nor more than twice the market value of the entire property against which the adverse claim is made if the claim is made against property, indemnifying it and also all persons in whose name such credit stands or for whose account such property is held, against all liability, loss, damage, costs, and expenses arising out of the refusal to permit withdrawal from such account or to deliver such property or arising out of the dishonor of checks, notes, or other instruments requiring payment of money by or for the account of the person to whose credit the account stands on the bank's books. Unless such restraining order, injunction, or other appropriate order is obtained, or such bond is given, the bank, notwithstanding such notice, may honor the

checks, notes, or other instruments requiring payment of money by or for the account of the person to whose credit the account stands or may deliver such property to, or on the order of the person for whose account such property is held, without any liability on the part of the bank. If an adverse claimant delivers to the bank at the office at which the account is carried or the property held his affidavit stating that of his own knowledge the person to whose credit the account stands or for whose account the property is held is a fiduciary for the adverse claimant and that such fiduciary is about to misappropriate the deposit or the property and stating the facts upon which the claim of a fiduciary relationship is based, the bank may refuse payment of the deposit or may refuse to deliver such property until the adverse claim is finally adjudicated or released, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit. The provisions of this section shall be applicable even though the name of the person appearing on the bank's books to whose credit the deposit stands or for whose account the property is held is modified by a qualifying or descriptive term such as "agent," "trustee," or other word or phrase indicating that such person may not be the owner in his own right of the deposit or property.

BANK OF CHINA
Head Office
Taipeh

AFFIDAVIT OF CHIEF SECRETARY OF BANK OF CHINA

Republic of China
City of Taipeh, Taiwan—ss.

KUN-FAN CHEN, being first duly sworn, deposes and says:
That he is, and ever since the twenty-eighth day of December, 1949, has been the duly elected and acting Chief Secretary of BANK OF CHINA, a corporation. That as Chief Secretary of said

corporation he is the custodian of the minutes of meetings of the directors of said corporation.

That annexed hereto and authenticated by the seal of the corporation are full, true and correct copies of resolutions contained in said minutes and adopted by the Board of Directors of BANK OF CHINA at meetings held on April 16th, 1949, September 1st, 1949 and December 22nd, 1949, together with correct English translations of the same.

/s/ KUN-FAN CHEN

(Seal of the Embassy of the United States of America) (Seal)

Island of Taiwan
City of Taipei
Embassy of the United
States of America—ss.

Subscribed and sworn to before me, Charles H. Pletcher, Vice Consul of the United States of America at Taipei, Taiwan, duly commissioned and qualified, this 2nd day of April, 1951.

/s/ CHARLES H. PLETCHER
Charles H. Pletcher
Vice Consul of the United States of America

Service No. 1386

[$2.00 American Foreign Service Fee Stamp affixed and cancelled.]

BANK OF CHINA
Head Office
"F"
TRANSLATION

COPY OF RESOLUTION ADOPTED BY BOARD OF DIRECTORS OF THE BANK OF CHINA AT A MEETING HELD IN SHANGHAI ON APRIL 16TH, 1949, AT 4 O'CLOCK P.M.

"Be it resolved that pursuant to confidential order No. 845 and Directive Reference Characters Chai Chien Hu [Chinese char-

acters] No. 95 successively received from the Ministry of Finance of the National Government, the Head Office and the Foreign Department of the Bank be forthwith removed respectively to Canton and Hongkong; and that General Manager Hsi Te Mou be and is hereby authorized and empowered to cause the said Head Office and said Foreign Department to be so removed and to do or cause to be done all things necessary or requisite in the premises."

(Sgd) SUNG HAN CHANG
Sung Han Chang, *Chairman*

Seal

(Sgd) T. C. TAI
T. C. Tai, *Chief Secretary*

BANK OF CHINA
Head Office

"D"

TRANSLATION

RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS OF THE BANK OF CHINA HELD IN CANTON AT 10 O'CLOCK ON THE FIRST DAY OF THE NINTH MONTH OF THE 38TH YEAR OF THE REPUBLIC (SEPTEMBER 1, 1949).

"WHEREAS a confidential directive Reference Characters Chai Chien Huei No. 3071 dated the 20th day of the 8th month of the 38th year (August 20, 1949) was received from the Ministry of Finance ordering that forthwith preparations be made to have the Head Office of the Bank removed to Chungking together with the National Government and to have the Foreign Exchange Department concerned remain as yet in Hong Kong and in the event of any difficulty arising to have the said department removed to Taiwan.

BE IT RESOLVED that pursuant to the said directive the Head Office of the Bank be and is hereby authorised to attend to its

removal as ordered and to cause to be done all necessary things in connection therewith."

/s/ SUNG HAN-CHANG
Sun Han-Chang, *Chairman*

/s/ T. C. TAI
T. C. Tai, *Chief Secretary*

BANK OF CHINA
Head Office

"D"

TRANSLATION

RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS OF THE BANK OF CHINA HELD IN HONGKONG AT 5 O'CLOCK ON THE TWENTY SECOND DAY OF THE TWELVETH MONTH OF THE 38TH YEAR OF THE REPUBLIC OF CHINA (DECEMBER 22TH, 1949).

"WHEREAS the Head Office of the Bank, in accordance with a directive Reference Character Tai (38) No. 0189 dated the 10th day of the 12th month of the 38th year (December 10th, 1949) from the Executive Yuan ordering that the Head Office of the Bank be removed immediately to Taipeh, was so removed to Taipeh on the fourteenth day of the twelveth month of the 38th year (December 14, 1949).

BE IT RESOLVED that the said removal is hereby approved unanimously."

/s/ P. Y. HSU
Hsu Pei-Yuan, *Chairman*

MINISTRY OF FINANCE
Republic of China
Taipeh, Taiwan
China

I, C. K. YEN, Finance Minister of the National Government of the Republic of China, do hereby certify that as such Minister I have general supervision and control over institutions incorporated by special charter of the National Government of the Republic of China, that according to the records of the Ministry of Finance, Bank of China is a corporation duly organized, existing and in good standing under the laws of said government and the head office of said corporation is now located in Taipeh, Taiwan, China.

I further certify that the National Government of the Republic of China is the owner of two-thirds of the capital stock of Bank of China and that, according to the records of the Ministry of Finance, HSI TEH-MOU is the General Manager of said bank under Article Twenty-five of its by-laws. I further, certify that the National Government of the Republic of China is advised of the pendency of certain actions entitled "BANK OF CHINA, a corporation, Appellant, v. WELLS FARGO BANK & UNION TRUST CO., a Banking Corporation, Appellee" in the United States Court of Appeals for the Ninth Circuit, and numbered 12698 and 12699 in the files and records of said Court. I certify that said actions were instituted by Bank of China through its duly authorized officers, and further that the National Government of the Republic of China, as majority stockholder, ratifies and approves the institution of said actions by Bank of China.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Taipeh this twenty-third day of March, 1951.

(Seal) /s/ C. K. YEN

I, GEORGE K. C. YEH, Minister of Foreign Affairs of the National Government of the Republic of China, do hereby certify that the

signature affixed above is the genuine signature of C. K. YEN who was at the time of signing and is now the Finance Minister of the Government of China.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this twenty-third day of March, 1951.

(Seal) /s/ GEORGE K. C. YEH

I, Charles H. Pletcher, Vice Consul of the United States of America in Taipeh, Taiwan, China, do hereby certify that the above is the signature of the Minister of Foreign Affairs of the Government of China, duly authenticated by the seal of the Ministry, and that both were affixed to this document in my presence on this date.

GIVEN under my hand and seal this twenty-eighth day of March, 1951.

/s/ CHARLES H. PLETCHER
Charles H. Pletcher
Vice Consul of the United States of America
American Embassy,
(Seal) Taipei, Taiwan

Service No. 1372
No fee prescribed

MINISTRY OF FINANCE
Republic of China
Taipeh, Taiwan
China

I, C. K. YEN, Finance Minister of the National Government of the Republic of China, do hereby certify that annexed hereto are full, true and correct copies of orders issued by the National Government of China to Bank of China, as shown by official records of the Ministry of Finance, together with correct translations in English to the same:

1. Confidential order No. 847 of February 27th, 1949;
2. Directive No. 95 of February 21st, 1949;
3. Confidential directive of August 20th, 1949;
4. Directive issued December 10th, 1949 by the Executive Yuan.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Taipeh this twenty-third day of March, 1951.

(Seal) /s/ C. K. YEN

I, GEORGE K. C. YEH, Minister of Foreign Affairs of the National Government of the Republic of China, do hereby certify that the signature affixed above is the genuine signature of C. K. YEN who was at the time of signing and is now the Finance Minister of the Government of China.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this twenty-third day of March, 1951.

(Seal) /s/ GEORGE K. C. YEH

I, Charles H. Pletcher, Vice Consul of the United States of America in Taipeh, Taiwan, China, do hereby certify that the above is the signature of the Minister of Foreign Affairs of the Government of China, duly authenticated by the seal of the Ministry, and that both were affixed to this document in my presence on this date.

GIVEN under my hand and seal this twenty-eighth day of March, 1951.

/s/ CHARLES H. PLETCHER
Charles H. Pletcher
Vice Consul of the United States of America
American Embassy,
Taipei, Taiwan

(Seal)

Service No. 1370
No fee prescribed

BANK OF CHINA
Head Office
"B" Translation
The Ministry of Finance

CONFIDENTIAL ORDER NO. 847

Date: 27th day of 2nd month of the 38th year of the Republic of China (i.e. February 27th 1949)

To: The Bank of China—Head Office.

Whereas this Ministry on the 26th day of the 1st month of the 38th year (i.e. January 26th 1949) received from the Executive Yuan a confidential order stating that inasmuch as the National Government shall as from the 5th day of the 2nd month of the current year (i.e. February 5th 1949) conduct all official business in Canton, the Central Bank of China, the Bank of China, the Bank of Communications, the Farmers' Bank, the Central Trust of China, the Postal Remittance & Savings Bank, and the Central Cooperative Bank, shall all according to law be established in the same locality with the National Government; that this Ministry shall forthwith instruct each of the said institutions to conduct all official business without fail in Canton together with the National Government as from the said 5th day of the 2nd month; but that inasmuch as Shanghai is the financial centre of the whole country it shall be necessary to maintain its stability and that each of the said institutions shall be responsible for assisting the National Government in maintaining such stability and concurrently for evolving measures for such purpose; and that this Ministry shall instruct each of the said institutions to evolve such measures and to submit the same;

Therefore it is hereby confidentially ordered that each of the aforesaid institutions take note of the foregoing and report the date of removal to Canton and said measures in order to have the same submitted to the Executive Yuan.

Seal

Hsu Kan
Minister of Finance

BANK OF CHINA
Head Office

"D"

TRANSLATION

THE MINISTRY OF FINANCE

DIRECTIVE REF. CHARACTERS CHAI CHIEN HU
[CHINESE CHARACTERS] NO. 95

Dated the 21st day of the 2nd month of the 38th year of the Republic of China (i.e. February 21st 1949)

To the Bank of China-Head Office

INRC: Petition dated the 7th day of the 2nd month of the 38th year setting forth that in compliance with an order senior officers of the Bank have been duly despatched as representatives of the Head Office to establish and maintain an office in Canton and also other senior officers have been ret*ia*ned in Shanghai to deal with all relative matters therein.

(Text): Petition duly noted. It is hereby ordered that the Foreign Department of the petitioner Bank be forthwith removed to Hongkong in order to maintain all contacts. Besides submitting a report hereof to the higher authorities (the Ministry) orders compliance therewith.

(Signed) HSU KAN
Minister

Character Hu No. 257

BANK OF CHINA
Head Office
"B"

TRANSLATION

MINISTRY OF FINANCE

Confidential Directive

REFERENCE CHARACTERS CHAI CHIEN HUEI NO. 3071
Dated the 20th Day of the 8th Month of the 38th Year
(August 20, 1949)

TO:

THE BANK OF CHINA-HEAD OFFICE.

1. The above-cited bank which is required in accordance with the provisions of its Charter to be established in same locality as the National Capital shall expeditiously prepare for removal to Chungking together with the National Government, and all its personnel shall not cause any delay under any pretext.
2. The Foreign Exchange Department (of the said bank) concerned and all necessary personnel may remain in Hongkong but shall in the event of any difficulty arising be removed to Taiwan; and in either case contact shall be maintained with the Head Office by having some of its personnel stationed in Chungking.
3. Documents and books and important public property and deeds shall be removed to Hongkong first and, whenever necessary, be further removed to Taiwan, but copies of such documents and books shall be kept in the Head Office for use and reference.
4. Should the said bank have no branch in Taiwan, permission may be obtained for the establishment therein of a business office, but no transaction with the public shall be undertaken for the time being.

5. As circumstances may so require, branches and sub-branches of the said bank may from time to time be closed or removed to places of safety.
6. Any one of the personnel of the Head Office or of any branch or sub-branch of the said bank having private contact with the "bandits" or receiving therefrom any clandestine orders shall be severely dealt with upon verification.

BE IT ORDERED that the foregoing six points be complied with and that report thereof be submitted.

(Signed)
HSU KAN
Minister

BANK OF CHINA
Head Office

"B"

TRANSLATION

From : The Executive Yuan
To : The Bank of China-Head Office
Date : 10th day of 12th month of the 38th year of the Republic of China (i.e. December 10, 1949)

Order No. Tai (38) 0189

Text : It is hereby ordered that the Bank of China-Head Office be removed to Taipeh immediately.

(Signed)
YEN HSI-SHAN
Prime Minister